

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

UNITED STATES OF AMERICA,

Plaintiff,

v.

DONALD A. DELATEUR,

Defendant.

CASE NO. CR18-5364 BHS

ORDER DENYING WITHOUT  
PREJUDICE DEFENDANT'S  
MOTION FOR COMPASSIONATE  
RELEASE

This matter comes before the Court on Defendant Donald Delateur's ("Delateur") emergency motion for compassionate release. Dkt. 58. The Court has considered the pleadings filed in support of and in opposition to the motion and the remainder of the file and hereby denies the motion without prejudice for the reasons stated herein.

**I. PROCEDURAL AND FACTUAL HISTORY**

On January 15, 2019, Delateur plead guilty to one count of possession of child pornography. Dkt. 27. On April 15, 2019, the Court sentenced Delateur to 48-months imprisonment, which was below the guideline range of 78- to 97-months. Dkt. 45. The Court also imposed supervised release for life. *Id.*

1 On May 20, 2019, the Court granted Delateur's motion to delay his voluntary  
2 surrender date until September 30, 2019 because he underwent a spinal fusion surgery  
3 and needed sufficient time to recover before incarceration. Dkt. 50.

4 On April 23, 2020, Delateur filed an emergency motion for compassionate release,  
5 Dkt. 58, and a motion to seal, Dkt. 59.<sup>1</sup> On April 25, 2020, Delateur filed an amendment.  
6 Dkt. 63. On April 27, 2020, the Government responded. Dkt. 64. On April 29, 2020, the  
7 Government filed a supplement. Dkt. 65. On April 30, 2020, Delateur filed a motion for  
8 leave to file an overlength brief, Dkt. 66,<sup>2</sup> and a reply, Dkt. 67.

## 9 II. DISCUSSION

10 A federal court may modify a term of imprisonment after it has been imposed  
11 when "the defendant has fully exhausted all administrative rights to appeal a failure of the  
12 Bureau of Prisons to bring a motion on the defendant's behalf or the lapse of 30 days  
13 from the receipt of such a request by the warden of the defendant's facility, whichever is  
14 earlier." 18 U.S.C. § 3582(c)(1)(A). As the country deals with the pandemic, some  
15 courts have found this requirement to be jurisdictional and some courts have found it to  
16 be a waivable claim-processing rule. The Ninth Circuit has granted expedited review of  
17 denial of a similar motion for failure to exhaust, and the oral argument is set for June 4,  
18 2020. *See United States v. Millage*, Cause no. 20-30086.

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21 <sup>1</sup> The Court grants the motion to seal.

22 <sup>2</sup> The Court grants the motion and has considered all the material submitted by Delateur.

1 In this case, the Court concludes that the warden should have a full opportunity to  
2 review Delateur's request before the Court addresses the merits. Regardless of whether  
3 the statute is jurisdictional or a waivable processing rule, the Court finds that the warden  
4 is in the best position to assess Delateur's situation and circumstances. Moreover, the  
5 issue may become moot during the 30-day period and a more accurate factual record may  
6 be developed. Therefore, the Court denies the motion without prejudice.

### 7 **III. ORDER**

8 Therefore, it is hereby **ORDERED** that Delateur's emergency motion for  
9 compassionate release, Dkt. 58, is **DENIED without prejudice** and Delateur's motion to  
10 seal, Dkt. 66, and motion for leave to file an overlength brief, Dkt. 59, are **GRANTED**.

11 Dated this 6th day of May, 2020.

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14 BENJAMIN H. SETTLE  
15 United States District Judge  
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